

REMARKS / ARGUMENTS

Regarding the Restriction Requirement

During a telephone conversation with Kathryn Marra on 6/22/04, a provisional election was made with traverse to prosecute the invention of Figures 1-3, Claims 1-11.

Consistent with the 6/22/04 provisional election, Applicant maintains the election of the species of Figures 1-3 with traverse, and submits that Claims 1-11 read on the species of Figures 1-3.

Additionally, however, Applicant respectfully traverses the Election / Restriction requirement for the following reasons.

The Examiner alleges that the species of Figures 1-3 (Species 1) and the species of Figures 4-6 (Species 2) are patentably distinct, and that none of the claims are generic.

In respectful disagreement with the Examiner, Applicant submits that independent Claim 12 is a generic claim that reads on both Species 1 and 2 identified as the embodiments of Figures 1-3 and 4-6, respectively, thereby providing a generic claim.

Specifically regarding independent Claim 12 (where the first numeral reference is with respect to Species 1, and the second numeral reference is with respect to Species 2), Applicant submits that Claim 12 is direct to:

A beverage container holder (120, 120') for a vehicle, the holder comprising:
an air vent portion (105, 105'); and
a beverage container support portion (125, 125') movably but not removably disposed at the vent portion (105, 105');

wherein the support portion (125, 125') has a first position (Figure 2, Figure 4) and a second position (Figure 3, Figure 6), the first position arranged to permit air passage through the vent portion in the absence of a beverage container (135, 135), the second position arranged to permit air passage through the vent portion and to hold a beverage container (135, 135);

wherein the first position (Figure 2, Figure 4) is such that the support portion (125, 125') is adapted to be retracted into a surface (100, 100) of the vehicle proximate

the vent portion (105, 105'), and the second position (Figure 3, Figure 6) is such that the support portion (125, 125') is adapted to be extended from the surface (100, 100).

In Figure 2, support portion 125 is depicted being folded up with its top portion being partially retracted into dashboard surface 100. Since Applicant does not specifically claim either a "fully" or a "partially" retracted support portion 125, Claim 12 must be read to cover a support portion that may be adapted to be either fully retracted or partially retracted into the dashboard. Accordingly Claim 12 is generic to both Species 1 and 2.

In view of Claim 12 being independent and generic and readable on both Species 1 and 2, Applicant respectfully submits that a restriction of the species identified as the embodiments of Figures 1-3 and 4-6 for examination purposes is improper.

Furthermore, Applicant has added new Claim 21, and submits that new Claim 21 is a generic linking claim with respect to Species 1 and 2. Specifically, Applicant submits that new Claim 21 is directed to:

A beverage container holder (120, 120') for a vehicle, the holder comprising:
an air vent portion (105, 105'); and
a beverage container support portion (125, 125') movably but not removably disposed at the vent portion (105, 105');
wherein the support portion (125, 125') has a first position (Figure 2, Figure 4) and a second position (Figure 3, Figure 6), the first position arranged to permit air passage through the vent portion (105, 105') in the absence of a beverage container, the second position arranged to permit air passage through the vent portion (105, 105') and to hold a beverage container (135, 135).

In view of new Claim 21 being independent and generic and readable on both Species 1 and 2, Applicant respectfully submits that a restriction of the species identified as the embodiments of Figures 1-3 and 4-6 for examination purposes is improper.

This amendment was not presented earlier because Applicant did not know of the Examiner's position until the Applicant was advised of the position by the present office

action. The claim amendment presented herein, which Applicant respectfully requests entry thereof, should only require a cursory review by the Examiner.

For at least these reasons, this Restriction Requirement is wholeheartedly traversed, and removal of the Requirement, at least with respect to the improper groupings noted above, is respectfully requested.

Consideration and allowance of all claims is respectfully requested.

Regarding the Objection to the Specification

The Examiner has objected to the specification and alleges that reference numerals used in the description of the embodiment of Figures 4-6 are the same as those used for the embodiment of Figures 1-3 for structurally different features, and requests corrective action.

Upon the recommendation of the Examiner, Applicant has amended Figures 4-6 to use primes to designate features of Figures 4-6 that are similar to the given features of Figures 1-3 but with some modification, thereby placing the figures in compliance with MPEP §608.02(e).

Accordingly, Applicant respectfully requests entry of the drawing amendments and approval thereof.

The foregoing is believed to be fully responsive to this office action.

If there are any charges with respect to this amendment, or otherwise, please charge them to Deposit Account No. 06-1130 maintained by applicant's attorneys.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above identified Deposit Account.

Respectfully submitted,

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AMENDMENTS TO THE DRAWINGS

Please amend Figures 4-6 to include primes to designate features of Figures 4-6 that are similar to the given features of Figures 1-3 but with some modification. The drawing amendments are described in the application as originally filed. No new matter has been added.

A replacement drawing sheet is provided herewith and is labeled as such.